Yolo Habitat/Natural Community Conservation Plan Joint Powers Agency

YOLO NATURAL HERITAGE PROGRAM

~ Partnering for conservation ~

VIA ELECTRONIC MAIL AND U.S. MAIL

May 23, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
PO Box 942836
Sacramento, CA 94236

Regarding: Letter of Comment
The Bay Delta Conservation Plan EIR/EIS NOP Scoping

Dear Chief Brown:

The Yolo County Habitat Conservation Plan/Natural Community Conservation Plan Joint Powers Agency ("JPA") appreciates this opportunity to provide early input into the Bay Delta Conservation Plan ("BDCP") EIR/EIS process.

The JPA, comprised of the County of Yolo, the cities of Davis, Woodland, West Sacramento and Woodland, and the University of California at Davis, was formed for the purpose of completing a multi-species habitat conservation in Yolo County. Known as the Yolo Natural Heritage Program ("YNHP"), the plan is a Habitat Conservation Plan ("HCP") under the federal Endangered Species Act and a Natural Community Conservation Plan ("NCCP") under state law. A Planning Agreement among the JPA member agencies, the California Department of Fish and Game and the US Fish and Wildlife Service was executed in August 2004. Scheduled for completion in early 2010, the YNHP will provide for the preservation, conservation and recovery needs of Yolo County's species and habitats by providing three key benefits to wildlife: 1) identify preserve areas sufficient to contribute to the recovery of multiple species, including all federally listed, proposed and candidate plant and animal species that have experienced significant decline in the County; 2) provide for the permanent protection of representative natural communities that characterize Yolo County; and 3) establish a management and monitoring program for lands set aside within the preserve.

The natural communities upon which species in Yolo County depend include riparian, woodland, wetland and grassland, all of which occur to varying degrees within the Delta. These natural communities are critical to sustaining fully functional ecosystems for the species proposed for coverage. Agriculture, a predominant landscape feature in Yolo County, is beneficial to 26 of the proposed covered species, including the Plan's

"flagship species," the Swainson's hawk. The initial list of species proposed for coverage includes 17 species listed by either Federal or State government as Endangered, Threatened, or Rare, as well as 60 other sensitive species (proposed, candidate, special concern or other sensitive species) known, or reasonably expected, to occur in Yolo County.

The BDCP and YNHP planning areas overlap within Yolo County. This presents unique challenges and opportunities as both conservation plans move toward completion simultaneously. For this reason, and based on uncertainties regarding eventual implementation strategies under the BDCP, these comments are submitted under the assumption that the JPA could act in the capacity of "responsible agency" as it may have limited permitting or approval power over select BDCP activities within the joint planning area.

ADEQUACY OF THE NOP

In summary, the BDCP EIR/EIS Notice of Preparation ("NOP") scoping process is deficient in that it failed to supply the public and interested agencies with sufficient detail to provide meaningful input (CEQA Guidelines § 15083(b)). The NOP states that the BDCP is "in the preliminary stages of development" and that the "overall approach" to the BDCP is still being refined. While CEQA encourages early input into the EIR process, Section 15082(a)(1) admonishes all parties to engage in a scoping process that allows for "meaningful" exchanges of information in order "to bring together and resolve the concerns of affected federal, state and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds" (CEQA Guidelines § 15083(b)). Despite this standard, and without the benefit of consistent, reliable and easily obtained information, participants in the BDCP scoping process have been asked to provide input on a conservation plan whose complexities and implications are unprecedented.

The Yolo JPA acknowledges the significant challenges facing the BDCP and the amount of work that has been undertaken to date. However, the lack of a well-defined project description and outcomes in the context of the NOP raises procedural concerns about the EIR/EIS scoping process. For example, a review of the and information presented in other BDCP documentation available on the California Resources Agency website calls into question the relevance of documents released prior to the EIR/EIS scoping process but absent from its proceedings. In particular, it is unclear whether or not the "Options Evaluations Report" dated 9-17-2007 is still under consideration and whether or not the BDCP planning boundaries will or will not include tributaries to the Delta. To illustrate, the probability that BDCP actions will impact the Yolo Bypass has been discussed at more than one meeting of the BDCP Steering Committee but that information was not provided in the project description or the scoping sessions. The NOP (pg 7) acknowledges the possibility that "areas upstream of the Delta" (presumably anywhere in the San Joaquin or Sacramento River watersheds) could be included in the BDCP. Without more specific guidance as to potential impacts, reviewers are faced with the daunting task of guessing where and how BDCP might impact those watersheds. Placing the burden of discovery on the public and interested agencies is not practical and certainly not in the spirit of CEQA.

The NOP includes a statement of the project's probable environmental effects; however the exhaustive list of possible impacts presented in the NOP (pg 9) clouds the issue by diluting the impact of "reasonably expected impacts." This degree of uncertainty after several years of BDCP deliberations reinforces the Yolo JPA's claim that the NOP process is inadequate and/or premature. More importantly, the decision to limit communication between the BDCP panel and the public at the scoping sessions to "one way streets" sharply curtailed the public's ability to get clarification on important issues. The decision to not answer questions at the scoping sessions was unfortunate and has fueled unnecessary speculation and innuendo about what the

BDCP is and what it is not.

Prior to moving on to specific comments below the JPA requests that DWR strongly consider refining the NOP scoping process and re-engaging the public with clearer information, improved outreach and opportunities for meaningful, productive dialogue.

SPECIFIC COMMENTS

Impact on local policies or ordinances protecting biological resources

Yolo County is in the process of updating its 1983 General Plan. Both the current and proposed General Plan contain policies and goals designed to preserve and enhance biological resources throughout the county, including the BDCP planning area. The BDCP EIR/EIR must assess the impact of BDCP activities on these goals and policies.

Impact on the developing Yolo County Habitat Conservation Plan/Natural Communities Conservation Plan

As stated previously, Yolo County, the four incorporated cities, and the University of California at Davis, are committed to the development of a county-wide multi-species conservation plan. Significant federal, state and local monies and other resources have been advanced toward this goal. The BDCP EIR/EIS must consider the impact of BDCP activities on the goals and objectives of the Yolo HCP/NCCP ("YNHP"). Specifically, how will biological outcomes benefiting species of common interest to the BDCP and the YNHP be developed and then accounted for? Importantly, how will competing biological needs be resolved?

Adverse effects on candidate, sensitive or special status species and their habitats

The BDCP EIR/EIS must consider the impact of the full range of BDCP activities (including but not limited to conveyance, water transfers, restoration, mitigation and monitoring) on species that depend on areas landward of BDCP aquatic habitats. The overlap area between BDCP and YNHP covers approximately 90,927 acres including 24,358 acres of natural vegetation and 54,395 acres of agriculture. The primary natural habitat associations in this area are annual grasslands, fresh emergent wetland, saline emergent wetland, valley foothill riparian, vernal pool complex and alkali sink. The overlap area represents a significant portion of these habitats in the YNHP planning area.

Many sensitive species are known to occur in this overlap area. Documented species localities in the YNHP GIS database include the Swainson's hawk (*Buteo swainsoni*), giant garter snake (*Thamnophis gigas*), many sensitive vernal pool plants and vernal pool invertebrates, the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and several other sensitive bird species. In addition, a large proportion of the potential habitat for many species is included in this Yolo-Delta overlap area including the California black rail (*Laterallus jamaicensis coturniculus*), black tern (*Chlidonias niger*), grasshopper sparrow (*Ammodramus savannarum*), delta tule pea (*Lathyrus jepsonii var. jepsonii*), Mason's lilaeopsis (*Lilaeopsis masonii*), rose mallow (*Hibiscus lasiocarpus*), Solano grass (*Tuctoria mucronata*), Colusa grass (*Neostapfia colusana*), Heckard's peppergrass (*Lepidium latipes var. heckardii*), Ferris' milkvetch (*Astragalus tener var. ferrisiae*), brittlescale (*Atriplex depressa*), Baker's navarretia (*Navarretia leucocephala ssp. bakeri*), alkali milk vetch (*Astragalus tener var. tener*), and San Joaquin spearscale (*Atriplex joaquiniana*).

This area is of critical importance to the overall success of the YNHP in meeting its open space and conservation goals, as well as meeting the NCCP/HCP regulatory requirements. At a minimum the BDCP EIR/EIS must consider the impact of aquatic restoration activities that displace habitats for the species outlined above.

Effect of West Nile Vectors on human and avian populations

One of the species proposed for coverage in the YNHP, the Yellow-billed Magpie (*Pica nuttalli*), is endemic to California's Central Valley and Coast Ranges. Suitable Yellow-billed Magpie habitat exists in the BDCP planning area. This species has been severely impacted by West Nile Virus over the last few years. Aquatic habitat restoration, especially tidal inundation and the creation of new shallow wetlands in the Delta, has the potential to increase mosquito populations in the Delta which in turn will increase vectors for West Nile Virus. This has implications for human as well as avian populations. The BDCP EIR/EIS must consider the impact of this disease vector on remaining Yellow-billed Magpie populations and on human health.

Effect of BDCP Actions on Yolo Bypass Wildlife Area

The Yolo Bypass Wildlife Area ("Yolo Wildlife Area") covers approximately 16,770 acres of managed wildlife habitat and agricultural land within the Yolo Bypass. A Management Plan was adopted for this area in July 2007 (available at www.yolobasin.org/management.cfm). The Yolo Wildlife Area supports two-hundred-eighty terrestrial vertebrate species, over 95 of which are known to breed there. Suitable habitat for 23 additional species exists in this area, although their presence has not been confirmed. The Yolo Wildlife Area supports 38 special status wildlife species, many of whom are locally rare. (Executive Summary, pg ES-6). The Yolo Wildlife Area is functionally critical to the success of the YNHP. The impact of BDCP actions on this biologically rich resource must be analyzed in the EIR/EIS. Years of coordinated work and energy has gone into the successful creation of this area, as well as many millions of dollars.

Effect of Water Transfers on Sensitive Species and Habitat , and groundwater resources

Actions and outcomes related to BDCP have the potential to increase water transfers in the Delta. These transfers will likely have a significant cumulative environmental effect on several species of concern including Giant Garter Snake and Swainson's hawk . Giant Garter Snakes depend on flooded rice fields in the BDCP planning area, which will likely be fallowed if the transfer of water becomes more lucrative than farming. This outcome would amount to a reduction of habitat for Giant Garter Snake, and as such must be fully analyzed in the EIR/EIS.

Swainson's hawks in Yolo County forage in a dynamic mosaic of crops, most of which require irrigation. If water is sold for its market value and diverted from agricultural production, the resulting decrease in crop diversity will amount to a reduction in Swainson's hawk foraging habitat that could have a significant environmental impact on the Swainson 's hawk population in Yolo County. This is a cumulative impact that must be analyzed in the EIR.EIS.

Surface water transfers have the added potential to adversely impact local groundwater basins. Over-drafting of existing groundwater reserves could occur if water is sold for its market value and growers rely too heavily on groundwater reserves. This is a cumulative impact that should be evaluated in the EIR//EIS.

ADDITIONAL COMMENTS/CONCERNS:

1. The Yolo JPA recommends consideration of reasonable alternatives beyond the four options identified in the "Options Evaluations Report" that may be discovered through the scoping sessions. A clear discussion of each reasonable alternative should be provided as well as the reasons for the elimination of alternatives not evaluated in detail.

2. The EIR/EIS should contain full disclosure and discussion of possible funding, implementation and monitoring commitments for BDCP.

3. The BDCP should expand the list of covered activities to include known water conveyance projects (planned or in place) undertaken by local governments within the BDCP planning area. Omitting these projects from the EIR/EIS analysis has the potential to underestimate the full impact of Delta related activities.

In conclusion the Yolo Habitat JPA appreciates this opportunity to comment and looks forward to continuing to work toward shared conservation goals and outcomes.

Respectfully,

Helen M. Thomson, Chairwoman
Yolo County Habitat Conservation Plan/
Natural Community Conservation Plan
Joint Powers Agency

cc: Congressman Mike Thompson
Senator Mike Machado
Assemblymember Lois Wolk
JPA Member Agencies